



March 12, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Proposed Check 21 Regulations

Dear Ms. Johnson,

The Michigan Credit Union League (MCUL) appreciates the opportunity to provide comments to the Federal Reserve Board (FRB) concerning the FRB's Proposed Check 21 Regulations. The MCUL is a trade association representing over 90% of state and federally chartered credit unions in the state of Michigan. This comment letter was drafted in consultation with the MCUL Government Affairs Committee, which is comprised of Michigan credit union staff and officials.

MCUL appreciates the FRB's efforts to drive the electronic presentment of checks for both economic and efficiency reasons. We recognize that there is a need to continue to move the financial services industry to the electronic transfer and presentment of checks without hampering the operations of the institutions or putting them at an economic hardship in order to comply with the laws. We also recognize the FRB's intent to try to provide the same consumer protections that exist with the current UCC while placating any public concerns about the transition. There are numerous benefits and challenges for the industry wide use of check truncation and MCUL supports the FRB's proposed regulations to move this process forward. MCUL also offers certain recommendations further discussed herein.

Summary of Comments

Overall, MCUL supports the proposed regulations for Check 21 subject to the following:

- MCUL supports the proposal to change the term "business day" within the act to "banking day" for the purposes of computing time from when a bank receives a claim.
- MCUL encourages the FRB to create sample notices for notification of consumers in the event that they file a claim and provide safe harbor for use of the sample notice.
- MCUL supports the inclusion of ACH debits into the warranty against duplicate presentment.
- MCUL supports the inclusion of warranty and indemnity rights, if a check claims to be a substitute check, but fails to meet the standards of a substitute check provided that there has been a legitimate attempt to satisfy the other requirements.
- With respect to indorsements, MCUL supports the proposal to limit the indorsements from institutions to the back of the check, with the exception of the reconverting financial institution.
- MCUL supports the miscellaneous changes to Regulation CC and in particular supports the extension of the time frame for providing notice of non-payment.

- MCUL supports the UCC revision to allow a payor bank to use a warranty claim to transfer the responsibility of honoring a remotely-created consumer item back to the depository bank.

MCUL requests clarification on the following item:

- MCUL requests clarification in the commentary of the proposal on the allowance for financial institutions to reverse recredits “when appropriate,” regardless if the amount was provided after a determination the claim was valid or pending the banks investigation.

Discussion

Banking Day. The FRB proposes to change the term “business day” within the act to “banking day” for the purposes of computing time from when a bank receives a claim. MCUL supports this provision, as some of its smaller credit union members are not open for business every business day, which results in mail not being opened on the day it is delivered to the credit union. MCUL believes that using “banking day” (the part of any day in which the financial institution is open to the public for carrying on substantially all of it’s banking functions) benefits all credit unions by changing the beginning of the time frame for the bank to respond to a claim to the first day they receive the letter that they are actually open for business.

Sample Notices and Safe Harbor. MCUL encourages the FRB to create sample notices for notification of consumers in the event that they file a claim. And, if credit unions use this sample language their notices should be provided safe harbor. Many credit unions do not have the resources to hire a lawyer to draft the language and ensure they comply with each of the required notices. Providing sample language and safe harbor is a clear and economical way for credit unions to comply with the intent of this type of legislation.

Consumer Disclosure. When providing disclosures to credit union members who have requested a substitute check copy, MCUL believes that it makes more sense to provide that information at the time the check is provided. We believe that to provide notices at this time is more economical and less confusing to the member. For example, if a credit union member requests a copy of a check over the phone, and the credit union were to provide a notice at the time of the request, then the credit union would have to mail out the notice without the check copy at that time. This would result in additional postage, as well as a notice referencing a substitute check that the consumer cannot view. If the notice is provided at the time the check is provided, then the disclosure and check can be mailed at the same time, and the consumer will be able to actually compare the substitute check to what is being described in the disclosure.

Reversing Recredits. MCUL requests clarification on the proposal to allow financial institutions to reverse recredits “when appropriate” regardless if the amount was provided after a determination the claim was valid or pending the bank’s investigation. We believe there should be additional commentary to describe situations where it is appropriate, or perhaps situations where it is inappropriate to reverse the recredits in this situation. MCUL does support the ability for a bank to be able to reverse both the amount and the interest that it recredited in the event that it deems the claim to be invalid.

Warranties. MCUL supports the inclusion of ACH debits into the warranty against duplicate presentment. In order to protect the consumer, create public support of the process, and to prevent loopholes, we believe that there should be no uncertainty of whether or not ACH transactions are

subject to this warranty. If they were, there is always the possibility that unscrupulous agents could use this method to try to circumvent the intent of the law.

If a check claims to be a substitute check, but fails to meet the standards of a substitute check, MCUL supports the inclusion of warranty and indemnity rights provided that there has been a legitimate attempt to satisfy the other requirements. Situations where we would consider a substitute check fails to satisfy the provisions would include:

- If the check fails to include the statement “This is a legal copy of your check. You can use it the same way you would use the original check.”
- If it did not contain an image of the front and back of the original check (i.e. there was only a copy of one side of the check).

Provided that a substitute check makes the effort to comply with the MICR line, provides an accurate representation of the front and back, attempts to conform to industry standards and attempts to be suitable for automated processing, then it should have warranty and indemnity rights, and where applicable, recredit and consumer awareness rights. In the event that the MICR line is repaired at any point along the transaction process, a check that purports to be a substitute check should still have warranties and indemnities as a substitute check. At the very least, the consumer should be protected in these situations.

Indorsements. With respect to indorsements, MCUL supports the proposal to limit the indorsements from institutions to the back of the check, with the exception of the reconverting financial institution. In order to set off this indorsement, MCUL believes that the reconverting bank should be required to place its indorsement on the front of the check. If more than this indorsement is placed on the front of the check, it threatens the ability of consumers to see the other valuable information located on the front and the overall readability.

Miscellaneous Changes to Regulation CC. MCUL supports the miscellaneous changes to Regulation CC and in particular supports the extension of the time frame for providing notice of non-payment. It makes sense that if a credit union receives a check after the cutoff hour for processing that the deadline to return that check should be extended. While most credit unions can process their checks within 24 hours, it would benefit those that need extra time to process and determine if a check needs to be returned for non-payment.

UCC. Finally, MCUL supports the UCC revision to allow a payor bank to use a warranty claim to transfer the responsibility of honoring a remotely-created consumer item back to the depository bank. A paying bank has no way of verifying the information presented as a draft and should therefore not be held responsible for the warranty of such item. It makes more sense that the depository financial institution be responsible for controlling this activity, as their clients will likely be the ones responsible for perpetuating any fraud.

We thank you for the opportunity to comment.

Sincerely,



Matthew Beard
Regulatory Specialist
Michigan Credit Union League

cc: Credit Union National Association, Inc.